IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 252 OF 2005

IN

STAMP NUMBER MAIN NO. 3000 OF 2005

M/S WIBRO CONSTRUCTION CO.REP.BY ITS DIRECTOR ....Applicant

Versus

MR. JOSE ANTONIO BRAGANZA, CALANGUTE GOA. ....Respondent

Mr. V. Menezes, Advocate for the Applicant.

Mr. Anthony D' Silva, Advocate for the Respondent

Coram:- N. A. BRITTO, J.

Date:- 9th March, 2006

P.C.

Heard Shri Menezes, the learned Counsel on behalf of the applicant/Complainant and Shri Silva, the learned Counsel on behalf of the respondent/accused.

2. The applicant/Complainant prosecuted the accused under Section 138 of the Negotiable Instruments Act, 1881, and by Judgment dated 26.09.2005, the accused came to be acquitted.

3. I have perused the Judgment of the learned J.M.F.C., Panaji. Apart from the reasons assigned by the learned J.M.F.C. in acquitting the accused under Section 138 of the Negotiable Instruments Act, 1881, at the

time of hearing, Shri D' Silva, the learned Counsel on behalf of the respondent/accused has taken a point of limitation submitting that as on the date the cheque was issued i.e. on 19.10.2000, the loan amount, which according to the applicant/Complainant was advanced to the said accused, was time barred. Shri D' Silva, has placed reliance on a Judgment of this Court in the case of Ashwini Satish Bhat v. Shri Jeevan Divaka & anr. (1999(1) Goa L.T. 408), wherein this Court relying on another Judgment in the case of Girdhari Lal Rathi v. P.T.V. Ramanujachari and another, (1998 Bank J. 127), held that if by the time, the cheque was issued, the debt was barred by limitation because no acknowledgement was obtained before the expiry of three years from the date of the loan, the debt was not legally enforceable. Shri Menezes, the learned Counsel on behalf of the applicant submits that the point of limitation was not taken by the accused before the learned J.M.F.C. It may be so but, in my view, if the accused can demonstrate on the very facts stated by the Complainant that the loan advanced by the Complainant was clearly time barred at the time when the said cheque was issued, then any Court is entitled at any stage, to allow the accused to raise such a point of limitation. In the case at hand, the Complainant himself has stated that the loan in the sum of Rs.7,00,000/- by cheque and Rs.4,00,000/- by cash, which swelled to Rs.23,86,185/-, without any acceptable & plausible explanation, was advanced by the applicant/Complainant in the year 1996, and if that is so, the recovery of the said loan had clearly become time barred at the time when the accused issued the cheque on or about 19.10.2000, three years having lapsed by then. In such a situation also, this would be not a fit case to grant leave to appeal. Shri Menezes submits that if the plea of limitation was raised by the accused at the trial, the Complainant would have produced the acknowledgement. It was certainly not the case of the Complainant that the accused had acknowledged the debt in writing before it was time barred. If that is so, it was incumbent upon the Complainant to have stated so in the notice, complaint, etc. Apart from the fact that the case of the Complainant was quagmired with other inconsistencies noticed by the learned J.M.F.C., the debt due to the Complainant was clearly time barred and, therefore, was not legally

enforceable.

4. Application rejected.

N. A. BRITTO, J.

arp/*